United States Court of Appeals

for the Second Circuit

APPELLANT'S REPLY BRIEF

75-7004

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 75-7004

Archie Peltzman,
Plaintiff-Appellant,

v

Central Gulf Lines, Inc.,
Defendant-Appellee.

REPLY BRIEF OF PLAINTIFF-APPELLANT

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CENTRAL GULF LINES,INC,

DEFENDANT -APPELLEE.

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ARCHIE PELTZMAN

APPELLEE'S COUNTERSTATEMENT EVADES THE ISSUES AS STATED IN APPELLANT'S BRIEF.

(a) Membership is not required in any union with one exception,the Railroad statute negating 14 (b) of N.L.R.A. It is inherently wrong because it violates basic rights of free will,& no democratic government can take away such right by law,custom,or practice,only by compulsion.See 29 U.S.C. 411 L.M.R.D.A. 1959 (AB5),Bill of Rights of members of labor organizations.See the Walsche. (AB 32).

(b) Appellant was discharged wrongfully,because of an invalid security clause based on a closed shop,exclusive preferential hiring - hall bargaining agreement.See the annotations attached to appellant's pleadings in his cross-motion for partial summary judgment (R 31) the hiring -hall practices which invalidate union security clauses.

AB 32 refers to Appellant's Brief.A--- refers to appellant's Appendix.

Nr 16- Hiring Halls in the Maritime industry under Federal Law.Nr 17- Merchant Seamen in the U.S. 1937-1952.Nr 22 - Hiring Practices,Maritime Industry,& Nr 23 - A Bill to legalize Maritime Hiring Halls,Committee Labor & Public Welfare,U.S Senate SR711 82nd Congress on S 1044,June 15,1951,(not passed).Also see Hoyt,Brooks - The union -security agreement,a fourteen year balance sheet 1962,129 p (A thesis in Columbia University Buisness College Library).The author omits cases on maritime & construction fields for obvious reasons (he says) that hiring-hall practices in these fields are illegal.

(c) Assuming arguendo the seaman must join the union, must pay dues & fees,in order to keep his employment,the bargain-ing agreement must still fall because it is in conflict with the maritime law & " In this as in all other cases an engagement for service made in contravention of the common or statute law,will be void".The Vanguard 6 Rol 207 ,(from Tenterden- Merchant Ships & Seamen 1881,London 12th ed. p 461.Also see Tit. 46 U.S.C. 599, 41 Stat.1006,Sec 10 (a) Merchant Marine Act of 1920 (AB4),& see J Brandeis dissenting opinion in Adams v Tanner 344 U.S. 616,(1916) re Paterson v Bark Eudora to the effect that payment by seamen to anyone for providing them with employment is forbidden by statute.

APPELLEE'S COUNTERSTATEMENT OF THE CASE REHASHES THE FACTS OF THE CASE BUT IGNORES THE "LAW OF THE CASE."

(a) Contrary to what appellee says in n6 p5 that appellant

is raising again all of the legalarguements which have been rejected by the Court in its decision ordering remand.

Appellant argues that the Court of Appeals approved all of his legal arguements and posed four questions to be decided by the District Court.Only the union - security clause question was condidered and answered.

(b) Appellant's pleading in (AB 13) summary of arguements with the cases cited control this case,& appellant refutes the Court of Appeals dictum that "Nothing in Maritime Law renders illegal a discharge that is authorized under a legitimate security clause", with the statement that "everything in Maritime Law protects a seaman from stipulations,illegal contracts,local laws infringing on,or denigrating his rights protected by statute.".See Blanco v Phoneix Compania de Navegacion SA CA4 Va, 304 F2d 13,19 AL3rd 410.Cases to the effect that seamen in modern times still get protective care,particularly with regard to their employment. Holding that seaman who had a liability in his employment contract of $ 1,800.00 re any injury was not bound by same.

REPLY TO APPELLE'S ARGUEMENT THAT HE WAS EXPELLED

(a) Where in the record is there any indication that appellant was expelled?.The dues sheet shows a suspension dated March 31, 1950.Suppose appellant had expired in 1951,would the union still automatically expel him in 1952?.Appellant argues the union rules are inherently invalid,because notice must be given before any

penalties can be invoked,otherwise the union is not treating its members fairly & equitably,since the very purpose of a union is to preserve and protect members rights and not to automatically deprive them of those rights.See Walshe case (AB32).

(b) Appellant was not automatically suspended,he had an inactive assignment to Boston,& only the Boston Office could suspend him,but first they would have to notify him that his inactive status was expired.He received the assignment three months after the six months automatic suspension & so he was not automatically suspended,but given an inactive assignment to Boston.

Rebutting the claim that appellant introduced no evidence to support his inactive status,see the first appendix in this action p 36,& EX 1 PRODUCED AT HEARING OCT 15 1974,SUP RECORD.

In this context it is odd that there are two suspension indications for the same date on appellant's dues sheets only 17 days after he received this assignment.On some of the other dues sheets of former members ie Spoonmore's there isn't any suspension indication (A 93) also his dues sheet ends in 1967. What happened from 1967 to 1971 when Mr Spoonmore replaced appellant on the S/S Green Ridge?.(A 96-97).

Perhaps the fact that appellant sent copies of his inactive status assignment & dues book & his letter to the union & Maritime Committee had something to do with both suspension indications & dates.Why put a date on the dues sheets if the suspension is automatic?

It can be deduced from the last dues payments.The plain truth is that when shipping is slow the dues are not paid in advance & and as long as the member has paid up in full on his return from a voyage,he can ship out and on his return pay the dues that have accumalted during his voyage.

Rebutting the arguement that the union has consistently applied its initiation fee to all members who return,appellant reminds the appellee that those returning members are not in his class re similar situation.First,he claims that when Parker v Lester case was decided & hundreds of seamen returned to their jobs,they did not have to rejoin their unions as new members. See the Brown & Berman cases (AB 28) discussed in the first brief in the first action on p 24,25,& 27.In those cases some seamen had to pay a small fee to their pension fund,but they did not have to pay an initiation fee,or lose seniority, or any accumalated benefits.My arguement is that according to the Lester decision that these men had been wrongly deprived of their validated documents,& they could not be penalized for something beyond their control.they left involuntarily. Second ,Appellee claims that only Homer & appellant ever returned to the union after Coast Guard had reissued their Licenses,so that only the treatment that Homer received from the union would be relevant.As the Court knows Homer only paid $ 1,000.00.It is not clear how it was finally settled on that amount.But appellant has been unable to find out from Homer

(who didnt answer appellant's letter) if the union demandedthe $ 2,000.00 with a letter similar to the one sent to the appellant, threatening his discharge from employment,if he did not pay the fee.Smith on the stand indicated no one ever was sent a similar letter,so that here is a case of two men,one gets a reduction of the asking price with no threats of discharge,& the other gets discharged.Both are similarly situated.But Homer comprised & the appellant didnt.But where is the documentary evidence of Homer's decision to pay,or sue,or compromise.Appellant found Homer's lawyer's letters in the union files,but didnt find the union's response.Smith says Homer admitted an initiation fee had to be paid,but where is the documentary evidence of this transaction? (ST 172) (T EBD 48).*

Rebutting the District Court's statement p 12,that appellant never made any attempt to settle his dispute with the union,See his letter to the union offering to pay a withdrawal fee before he appealed t the N.L.R.B!s decision not to issue a complaint in the dispute.(A 41-42 in the first appendix in first action),& in (R 31) on remand.

Appellee's statement that six hours of testimony was enough time for all the witnessess appellant subpoened,misconstrues the rules.The rules require sufficient time to put in the record all the evidence that either party wishes to introduce.This was not done in this case.

ST 172 refers to supplemental transcript,& T EBD refers to partial transcript submitted in motion opposing summary judgment.

REBUTTING APPELLEE'S CASES

Rebutting the cases cited by appellee,appellant states that the Mobil Oil Case is applicable here,& if appellant worked for Mobil Oil,& lived in New York or any of the thirty states that allow union security clauses,then appellant could not be discharged by the Company under the holding of the decision for failure to pay an initiation fee,or for not joing the union.

The Buckley case is interesting for the fact that the N.L.R.B. in an Amicus Curie brief argued that Buckley did not have to& be a member ie join,but he would have to pay the dues & fees.

In appellant's case the N.L.R.B. refused to issue a complaint even though appellee insists that appellant join & pay the initiation fee,or be discharged from his job.

No cases are cited rebutting the cases in appellant's brief as authority that Maritime Law is supreme vis a vis Labor Law & that Maritime Law must be uniform,& forbids payments to anyone for providing seamen or potential seamen with employment.See J Brandeis discussing Patterson v Bark Eudora (supra) in the Tanner case.(supra).

No cases are cited rebutting the cases in appellant's brief that the union was the litigant in six law suits all having to do with illegal,exclusive preferential hiring-hall treatment of Radio Officers,& promised in two consent decree cases to obey the mandate of the Court.(A 24-41).

See the American Radio Association log (union publication) July 1950,showing response to shipping company's request for members of the union on the shipping list.They struck the companies on all the coasts & coerced the companies into signing . signing an illegal contract.See Docket nr 21791 ,consent decree entered into after a contract signed.(A 41)

Conclusion

There being a distinct feeling that a mistake has been made & the District Court has misinterperted the " Law of the Case", it is respectfully submitted that the decision granting summary judgment be reversed,& a partial summary judgment be granted to appellant declaring that his discharge from his permanent job aboard the S/S GREEN RIDGE, was wrongful & illegal.

Dated: New York,New York,April 21,1975

Respectfully submitted,

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U. S. Court of Appeals
2nd Circuit

Certificate of Service

The undersigned affirms that he mailed two copies of a Reply Brief in the Action entitled Peltzman v Central Gulf No. 75-7004 on April 21st, 1975.

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